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In re Application of
KUHMONEN, Mauri
Application No.: 09/623,542
PCT No.: PCT/AU99/00135
Int. Filing Date: 05 March 1999
Priority Date: 05 March 1998
Attorney Docket No.: GH-00322
For: SCREENING APPARATUS

DECISION ON PETITION

This decision is in response to applicant's "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed on 23 April 2002, which is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 05 March 1999, applicants filed international application PCT/AU99/00135 which claimed a priority date of 05 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 10 September 1999. A Demand for preliminary examination was filed prior to the expiration of the 19 months from the priority date. Accordingly, the thirty-month period for paying the basic national fee expired at midnight on 05 September 2000.

On 05 September 2000, applicant filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee of \$860 and an English translation of the international application.

On 12 October 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e) U.S.C. 371 (Form PCT/DO/EO/905) indicating that the declaration was not in compliance with 37 CFR 1.66 or 37 CFR 1.68. The notification was mailed to an address that was not the correspondence address listed on the Transmittal Letter filed 05 September 2000.

On 30 May 2001, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the notification of Missing Requirements mailed 12 October 2000 within the time period set therein.

On 23 April 2002, applicant filed the present Petition to Withdraw Holding of Abandonment.

DISCUSSION

Applicant states in their present petition, "to date we have not received the Notification of Missing Requirements or any other communication from the Patent Office, i.e., a Filing Receipt." Since the Notification of Missing Requirements was mailed to address that was not listed on the Transmittal Letter, the Notification of Missing Requirements (Form PCT/DO/EO/905) dated 12 October 2001 is hereby vacated. Further, the Notification of Abandonment dated 30 May 2001 is withdrawn.

Additionally, applicant states, "enclosed is a copy of a report from our Docketing System showing the activity on the above-references patent application, i.e., the filing of the case in the U.S. Patent Office, receipt of the Postcard and receipt of executed Declaration and Assignment from Applicant." As stated in the Manual of Patent Examining Procedure, Section 503, the best evidence of what was actually received by the Office on a particular date is a copy of returned date stamped postcard receipt that was filed with papers in question and contains a specific itemization of all items being submitted. In the present instance, applicant has not provided any evidence, such as a date stamped return receipt post card, that evidences receipt by the Office of the original declaration. Additionally, a review of the application file reveals that the declaration allegedly filed is not located therein. A review of the application file reveals that the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America have not been completed.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED**.

The application is being returned to the DO/EO/US for processing in accordance with this decision, that is, for mailing a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that the oath or declaration requirement of 35 U.S.C. 371(c)(4) has not been satisfied.

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